



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable Ken Hechler, Chairman
Subcommittee on Energy Research,
Development and Demonstration
Committee on Science and Technology
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of February 9, 1976, requesting our views on subsection 17(g)(2) of H.R. 3474 with regard to the disposition of nonnuclear demonstration plants acquired by the Energy Research and Development Administration (ERDA) as a result of a default on a loan guarantee by the borrower managing the demonstration plant. Subsection 17(g)(2) provides that:

"(2) If the Administrator makes a payment under paragraph (1) of this subsection or section 202(b) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1142) (b) the Administrator shall be subrogated to the rights of the recipient of such payment as specified in the guarantee or related agreements including, where appropriate, the authority (notwithstanding any other provision of law) to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or to permit the borrower, pursuant to an agreement with the Administrator, to continue to pursue the purposes of the commercial demonstration facility if the Administrator determines that this is in the public interest." (Emphasis added.)

We recognize that arrangements may be made under the above provision in which the Government would not acquire the right to dispose of property upon default. In these

instances the disposition of such property would be governed by the terms of the appropriate agreements.

The concern, however, is with the disposition of property in which the Government, pursuant to agreements executed, acquires an interest in the property that may be disposed of by the Government. In this regard, we believe the phrase "notwithstanding any other provision of law" in subsection 17(g)(2) would exempt such disposals of demonstration plants and facilities from the provisions of the Federal Property and Administrative Services Act of 1949, as amended, 42 U.S.C. 5461, et seq.* It is further our view that in the absence of that phrase, such disposals would be subject to the provisions of the Act.

Subsection 17(g)(2) authorizes the Administrator of ERDA to dispose of any property acquired pursuant to a default under that section. With regard to this provision, we agree with ERDA that it has authority, inherent in the enabling statutes, to dispose of products generated by demonstration plants. In this regard, the phrase "notwithstanding any other provision of law" would exempt such disposals of the demonstration plants and facilities from the provisions of the Federal Property and Administrative Services Act of 1949, as amended, 42 U.S.C. 5461 et seq.*/

ERDA, however, contends in the paper you furnished us that it already has adequate statutory authority to dispose of demonstration plants without regard to the provisions of the Federal Property and Administrative Services Act. In

*/ That Act provides that any property under the control of any Federal agency which is not required for the needs of that agency or for the discharge of its responsibilities, must be disposed of according to certain requirements in the Act. Responsibility for the disposition and direction of such property is placed within the jurisdiction of the Administrator of the General Services Administration. Under the provisions of the Act, the Administrator may delegate those responsibilities to the agency in possession of the property. The designated agency must dispose of the property in accordance with the authority delegated and regulations prescribed by the Administrator.

support of its position, ERDA cites provisions of the Energy Reorganization Act of 1974 (P.L. 93-438), the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 et seq.); and the Federal Nonnuclear Energy Research and Development Act of 1974 (P.L. 93-577). We find no such authority in existing legislation.

Energy Reorganization Act and Atomic Energy Act

With regard to the Energy Reorganization Act of 1974, section 107 of that Act provides in part:

"(a) The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental, or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him. Such functions of the Administrator under this Act as are applicable to the nuclear activities transferred pursuant to this title shall be subject to the provisions of the Atomic Energy Act of 1954, as amended, and to other authority applicable to such nuclear activities. The nonnuclear responsibilities and functions of the Administrator referred to in sections 103 and 104 of this

Act shall be carried out pursuant to the provisions of this Act, applicable authority existing immediately before the effective date of this Act, or in accordance with the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2051-2053).

"(b) Except for public buildings as defined in the Public Buildings Act of 1959, as amended, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950, the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependants of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pursuant to this section, shall be in the United States." (Emphasis added.)

Subsection 107(a) authorizes the Administrator to carry out his nonnuclear responsibilities in the same manner as he is authorized to carry out his responsibilities under Chapter 4 of the Atomic Energy Act of 1954, as amended. The provisions of that Chapter, sections 2051-2053 of title 42, relate solely to the conduct of research and development activities in the nuclear field: section 2051 provides authority to make contracts, agreements, and other arrangements for nuclear research and development; section 2052 authorizes the Administrator to conduct the same type of research activities specified in section 2051; and section 2053 authorizes ERDA to conduct research activities for other persons where private facilities are inadequate for those purposes. These provisions are not concerned with the disposal of any property.

ERDA has also cited section 161g of the Atomic Energy Act as authority to dispose of real and personal property. This section, codified as subsection 2201(g) of title 42, authorizes ERDA to dispose of certain property in accordance with the provisions of Chapter 13 of that Act (42 U.S.C.A. 2201-2224). Subsection 2201(j), the only other provision in Chapter 13 concerning the disposition of property, does in fact authorize disposals without regard to the provisions of the Federal Property and Administrative Services Act of 1949; however, it does not fall within Chapter 4 of the Atomic Energy Act. Furthermore, disposals made pursuant to subsection 2201(j) are exempt from the provisions of the Federal Property and Administrative Services Act only (1) where such property consists of radioactive materials or (2) where the disposal can be justified on grounds of national security. Thus, this authority, while transferred to ERDA by the Energy Reorganization Act, only applies to the disposals of radioactive material and those based on national security grounds.

It should also be noted that subsection 107(a) of the Energy Reorganization Act of 1974 also authorizes ERDA to carry out its nonnuclear responsibilities " * * * pursuant to * * * applicable authority existing immediately before the effective date of this Act." We believe this provision can be interpreted as making the Federal Property and Administrative Services Act applicable to the disposition of non-nuclear property by ERDA. Therefore, in view of the above considerations, it is our opinion that neither the Energy Reorganization Act of 1974 nor the Atomic Energy Act of 1954, as amended, provide adequate authority for ERDA to dispose of nonnuclear demonstration plants acquired upon default of a borrower without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

Federal Nonnuclear Energy Research and Development Act

With regard to the Federal Nonnuclear Energy Research and Development Act of 1974, ERDA contends that subsection 8(d)(2)(I) and (J) of that Act, requiring plans for continued use of successful demonstration plants and plans for dismantling unsuccessful plants, exemplify Congressional recognition of the need to exempt demonstration plant property from the provisions of the Federal Property and Administrative Services Act. That subsection provides:

"(d)(1) The Administrator shall, within six months of enactment of this Act, promulgate regulations establishing procedures for submission of proposals to the Energy Research and Development Administration for the purposes of this Act. Such regulations shall establish a procedure for selection of proposals which--

* * * * *

"(2) * * * specify the types and form of the information, data, and support documentation that are to be contained in proposals for each form of Federal assistance or participation set forth in subsection 7(a): Provided, That such proposals to the extent possible shall include but not be limited to--

* * * * *

"(I) plans for continued use of the plant if the demonstration is successful; and
(J) plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned."

We do not believe that those subsections adequately support ERDA's contention, at least with respect to property, over which the United States has disposal power, acquired upon default of a guaranteed loan.

These subsections provide that applicants from private industry must submit plans and proposals to ERDA, in accordance with regulations and procedures established by that agency, for the receipt of Federal assistance or participation in cooperative programs with Government as provided in the Act. Under these provisions, such proposals should include plans for both the continued use and the possible dismantling of demonstration plants. However, we do not view the language of these provisions as being broad enough to exempt any disposals of those plants from the provisions of the Federal Property and Administrative Services Act.

Therefore, it is our opinion that the provisions of the Nonnuclear Energy Research and Development Act of 1974 does not grant ERDA authority without regard to the provisions of the Federal Property and Administrative Services Act,*/ to dispose of demonstration plant properties, over which the United States has disposal power, acquired as a result of a defaulted loan.

Sincerely yours,

SIGNED ELMER B. STAATS

Comptroller General
of the United States

*/ It should be noted that section 483 of title 40, the antitrust provision of the Federal Property and Administrative Services Act of 1949, as amended, prohibits any Federal agency from disposing of any plants or other property to any private interest without the advice of the Attorney General as to whether such a disposal would be inconsistent with the anti-trust laws. This section applies to real property where the acquisition cost to the Government was at least \$1,000,000, and to personal property with an acquisition cost of at least \$3,000,000. In view of the likely sizeable monetary investment in the demonstration plants and facilities, there is little doubt that this section would have potential application to the disposition of such demonstration plants. This would appear to bolster the argument that such disposals should be subject to the provisions of the Federal Property and Administrative Services Act.